

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHEILA K. BOYER)	
Claimant)	
VS.)	
)	Docket No. 1,021,843
MERCY REGIONAL HEALTH CENTER)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the August 25, 2005, preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Claimant alleges she aggravated a preexisting condition in her neck in a series of repetitive micro-traumas. In the August 25, 2005, Order, Judge Benedict denied claimant's request for medical treatment. Although the Order omits the Judge's findings, it is implied the Judge determined claimant did not sustain accidental injury arising out of and in the course of her employment from the alleged series of micro-traumas.

Claimant contends Judge Benedict erred. Claimant argues she began noticing additional symptoms in June 2003 and that the evidence points to an aggravation and/or acceleration of a preexisting condition in her neck from repetitive work duties. Claimant requests the Board to find she sustained accidental injury arising out of and in the course of her employment with respondent and to reverse the preliminary hearing Order of Judge Benedict in this claim.

Respondent and its insurance carrier (respondent) argue claimant's symptoms are a natural progression of the preexisting condition. Accordingly, respondent requests the Board to affirm the August 25, 2005, Order.

The only issue before the Board on this appeal is whether there was an aggravation and/or acceleration of a preexisting condition in claimant's neck from a series of repetitive micro-traumas beginning in June 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

In approximately 1998, claimant began working as a radiology transcriptionist for respondent. In total, claimant has been a medical transcriptionist for 27 years.

In November 1999, claimant reported an injury to respondent. Her symptoms at that time were neck pain, right shoulder pain and some right hand numbness. According to claimant, after receiving treatment, which included an October 2000 cervical spine MRI and steroid injections in her neck and back, claimant's condition stabilized and she discontinued treatment in approximately November 2001.

The October 16, 2000, MRI of claimant's neck revealed (1) degenerative disc disease involving C4-5 and C5-6; (2) small right paracentral disc protrusion and osteophyte formation at C4-5 resulting in right lateral recess and right foraminal encroachment or stenosis; (3) left paracentral disc protrusion and osteophyte formation at C5-6 associated with left lateral recess and foraminal stenosis (the latter finding was of questionable significance since claimant's symptoms were primarily right-sided); and (4) straightening of the cervical spine possibly due to underlying muscle spasm (nonspecific finding).

In short, claimant underwent two years of conservative treatment, which included physical therapy and trigger point and epidural injections in her neck and back. After her treatment ended in November 2001, claimant then continued to work for respondent in her regular occupation without restrictions. Beginning in November 2001, claimant worked at least eight hours per day and some days worked overtime, sometimes working seven days per week. Claimant settled the claim for the November 1999 injury in February 2002.

In June 2003, claimant began to notice additional symptoms. Claimant had more neck pain and had symptoms in both upper extremities, including occasional numbness in both hands, electrical shocks down her right arm and considerable right shoulder pain. Claimant received treatment for her symptoms from Dr. Joseph Schlageck, including a June 17, 2003, cervical spine MRI. The impressions from that MRI were (1) moderate to large-sized left paracentral disc protrusion at the C5-6 level, increased in size, appearing to be associated with ventral surface cord and left C6 nerve root impingement and (2) small right paracentral disc protrusion at C4-5 appearing to be relatively stable from the prior exam.

Claimant was referred to neurosurgeon Dr. Eustaquio O. Abay, II, who saw claimant on July 1, 2003, and discussed surgery with her. Claimant decided against surgery after Dr. Abay told her that her neck condition might not worsen but that she should also consider whether she could tolerate the pain. Dr. Schlageck had restricted claimant to no more than six hours of work per day. Nonetheless, after seeing claimant on July 1, 2003, Dr. Abay released claimant to her regular job duties, which included working eight to 10 hours per day.

On September 19, 2003, Dr. Abay wrote Cheryl P. Ross, who is not identified in the record. Nevertheless, the doctor wrote that he examined claimant on July 1, 2003, and that her "MRI revealed multi-level disease, most significantly a herniated disc at C4-5 and C5-6" and that her work may have contributed to the degeneration in her cervical spine and, therefore, her work may have indirectly caused the disc herniations. Dr. Abay wrote, in part:

Ms. Boyer expresses that she has been a transcriptionist for 26 years. It is plausible that this many years of typing and working at a computer would result in degeneration of the cervical spine due to recurrent strain. Thus, as the degeneration would progress as she continues to type the weakened disks may ultimately herniate. This injury would clearly not occur with one incidence of typing, but many years of remaining at a computer repetitively flexing, extending and moving the neck side to side could certainly cause the cervical spine to degenerate. Therefore as her work *may* have contributed to the degeneration, her work may have indirectly resulted in the disc herniations.¹ (Emphasis added.)

Claimant had experienced symptoms off and on between February 2002, when she settled her claim, and June 2003, when she noticed additional symptoms. Claimant's pain would begin two to four hours after working. In June 2003, claimant's pain was worse and was almost all the time. But in the summer of 2004, claimant's neck and right arm pain worsened.

After approaching respondent about surgery in the summer of 2004, respondent scheduled an appointment for claimant to see neurosurgeon Dr. David P. Fritz. Dr. Fritz ordered an MRI, which was performed in January 2005. The January 19, 2005, MRI revealed (1) moderate size central and left paracentral disc protrusion at C5-6, appearing to impinge slightly on the ventral surface of the cord and possibly the left C6 nerve root (similar findings were present on the June 17, 2003, exam) and (2) diffuse disc bulge at C4-5 associated with mild right lateral recess narrowing or stenosis (finding appearing to be relatively stable since the previous exam). Claimant testified respondent told her they

¹ P.H. Trans., Cl. Ex. 3.

were not going to pay for surgery as respondent believed her symptoms were from degenerative disc disease.

Claimant testified at the preliminary hearing that respondent had recently changed her hours. Claimant now works 40 hours per week, working less than eight hours per day but working every day of the week.

As indicated above, the principal issue in this claim is whether claimant's increased symptoms are due to the natural aging process and natural progression of her degenerative disc disease or whether claimant's work as a transcriptionist either injured or aggravated her neck.

In late January 2005, claimant saw Dr. David P. Fritz. On February 21, 2005, Dr. Fritz wrote respondent's insurance carrier and advised that (1) he believed claimant never fully recovered from her earlier neck injury and, therefore, he felt her current condition was probably related to the earlier injury, (2) he was unable to state whether claimant's work activities exacerbated her underlying chronic condition as he did not ask claimant that question, but he would be inclined to believe that claimant had an acute exacerbation if she said something on the job caused the onset of her pain, and (3) her cervical spondylosis is a degenerative condition that occurs over time but an acute event could exacerbate the condition and cause symptoms.

At her attorney's request, claimant was examined by Dr. Philip R. Mills. Dr. Mills examined claimant in April 2005 and diagnosed claimant with (1) degenerative disc disease of the cervical spine, (2) moderate sized central and paracentral disc protrusion at C5-6 impinging the ventral surface of the cord and perhaps the left C6 nerve root, and (3) diffuse disc bulge at C4-5 with mild right lateral recess narrowing and stenosis. Dr. Mills opined that it appeared claimant's work activity had exacerbated or accelerated her underlying preexisting condition. The Board notes it would have been helpful if the doctor would have explained how he reached that conclusion.

Interestingly, respondent agreed for purposes of the February 2002 settlement that claimant injured her neck due to repetitive mini-traumas sustained while she performed her job as a transcriptionist but respondent now challenges that claimant's duties as a transcriptionist have either caused her present symptoms or exacerbated her underlying degenerative disc disease. Faced with that dichotomy, at the conclusion of the April 20, 2005, preliminary hearing the Judge requested Dr. Lee R. Dorey to perform an independent medical examination. Dr. Dorey examined claimant in May 2005 and, after reviewing claimant's records from various health care providers, concluded claimant's present cervical problems were due to the natural progression of her preexisting condition.

In the August 25, 2005, Order, Judge Benedict denied claimant's request for medical treatment. Based upon the present record, the Board finds the evidence fails to establish that claimant's present symptoms are due to a new work-related injury. Accordingly, the Board finds no persuasive reason to disturb the preliminary hearing Order.

WHEREFORE, the Board affirms the August 25, 2005, preliminary hearing Order entered by Judge Benedict.

IT IS SO ORDERED.

Dated this ____ day of October, 2005.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Frederick L. Haag, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director